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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/555,459

05/31/00

FREDERICK

M

0/97322US

HM12/0717

WILLIAM M BLACKSTONE
AKZO NOBEL
1300 PICCARD DRIVE
SUITE 206
ROCKVILLE MD 20850-4373

EXAMINER

DEWITTY, R

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

07/17/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/555,459

Applicant(s)

FREDERICK ET AL.

Examiner

Robert M DeWitty

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-7 are pending in the instant application.

Acknowledgement is made of Applicant's amendments filed 6/25/01.

Applicant's arguments filed 6/25/01 have been fully considered and are persuasive for the following reasons: Because Applicant has amended claim 1 to include the limitation of "a reclosable strip for reclosing the package after opening" and Gero does not teach a reclosable strip, the rejection under 35 U.S.C. section 102(b) is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gero, further in view of Hisamitsu Pharm Co. Ltd.

Gero (U.S. Pat. No. 4,692,143) teaches a foil containing a ready-to-use vaginal Article premoistened with a spermicidal composition. The contraceptive unit is a sponge which has a nonoxynol-9 spermicide in solution absorbed in and held by the voids or pores of the sponge (col. 2, lines 33-38). The foil is a sealed sterile foil packet comprising two opposing sheets or films heat and/or pressure sealed around the periphery to form an enclosure for the sponge and to ensure sterility of the packet

contents. The sheets may further comprise a foil-thermoplastic film laminate sealed together around their periphery (col. 4, lines 14-18). Gero does not teach a sealed foil comprised of a barrier layer of a metal foil.

Japanese Patent (JP7223653) assigned to Hisamitsu Pharm Co. Ltd. teaches a laminating packaging bag for containing medicines. The bag is laminated, and has a structure of layers composed of paper/polyethylene/aluminum/polyethylene, and cellophane/paper/polyethylene/aluminum/polyethylene. The laminating bag further comprises a seal, which surrounds the bag, and a sliding clasp fastener. The bag can preserve contents well, and be easily cut to allow access to the contents.

Based on the art available at the time the invention was made, a laminated bag comprised of polyethylene and aluminum, whose contents contain a intravaginal article such as a vaginal contraceptive, would have been known to one of ordinary skill in the art. Further, the bag would have contained a sliding clasp fastener. One with ordinary skill in the art would have been motivated to make such a bag in order to ensure preservation of the medicines contained with the intravaginal article, such as spermicide contained in the contraceptive. Thus, the invention is obvious.

Response to Arguments

2. Applicant's arguments filed 6/25/01 have been fully considered but they are not persuasive because of the following reasons: Applicant asserts that Hisamitsu does not teach a package which comprises a reclosable strip for reclosing the package after opening and therefore does not render amended claims 1 and 5, and original claims

3,4, and 7 obvious. However, Applicant's assertion is incorrect. Hisamitsu teaches that the laminated packaging bag comprises a seal, which surrounds the bag with a sliding clasp fastener (Abstract). The rejection is thus maintained.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

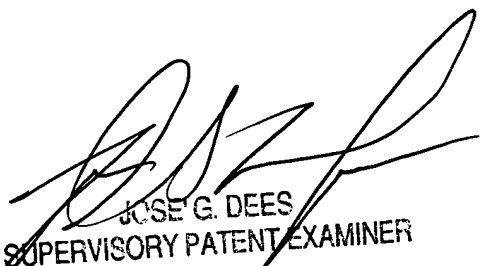
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7924,

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
July 15, 2001


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
1616